

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

KENDALL RAYE ROGERS,

Plaintiff,

V.

C. A. No. 05-721-KAJ

STATE OF DELAWARE,  
DEPARTMENT OF PUBLIC SAFETY,  
DMV,

Defendants,

**APPENDIX  
TO  
DEFENDANT’S OPENING BRIEF  
SUPPORTING THE MOTION FOR SUMMARY JUDGMENT**

/s/ Frederick H. Schranck

Frederick H. Schranck (ID No. 925)  
Delaware Department of Justice  
PO Box 778  
Dover, DE 19903  
(302) 760-2020  
Attorney for Defendant  
State of Delaware

Dated: September 27, 2006

**APPENDIX**

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**RELEASE AND SETTLEMENT AGREEMENT**

Kendall Raye Rogers, with intent to bind himself and his heirs, spouse, legal representative and assigns, in exchange for the credit granted to him of seven and a half additional sick days which he hereby acknowledges to be good and valuable consideration to be granted by the State of Delaware, for and in consideration of the provisions contained herein, hereby releases his respective claims against the State of Delaware, Department of Public Safety, Division of Motor Vehicles, and any officers, agencies and employees, past and present, and hereby forever releases and discharges the claims and liabilities, demands, actions and suits, proceedings, judgments, damages, debts and causes of action, which Kendall Raye Rogers has or may have against Department of Public Safety, Division of Motor Vehicles, the State of Delaware, and employees of these agencies of the State of Delaware, whether in law or equity, and whether arising in contract or in tort, as a result of the events of January, February and March, 2002 when Kendall Raye Rogers attempted to return to work for the Division of Motor Vehicles following knee surgery. 56.25 HOURS

Further, in exchange for the above consideration, Kendall Raye Rogers shall dismiss, with prejudice, all the claims in the lawsuit *Rogers v. State of Delaware*, C.A. No. 03-476-KAJ, in the United State District Court for the District of Delaware.

It is expressly understood and agreed that acceptance of the above consideration is in full satisfaction of a disputed claim, and that the granting of this credit for such leave is not an admission of liability. Kendall Raye Rogers declares and represents that no promise or agreement not expressed in this Release and Settlement Agreement has been made to him and that this Release and Settlement Agreement contains the entire agreement between the Parties to this Release and Settlement Agreement, and that the terms of this Release and Settlement





Agreement are contractual, and not a mere recital.

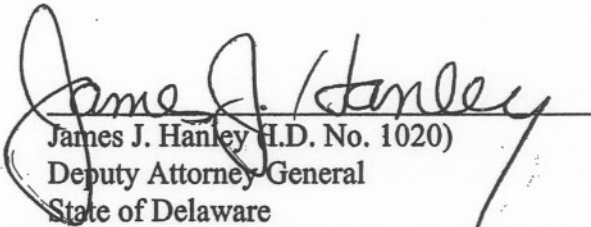
The parties agree that there will be no retaliation by the Division of Motor Vehicles towards Kendall Raye Rogers as a result of his filing, pursuing or settling this lawsuit, and further agree that in view of Kendall Raye Rogers' doctor's having assigned him permanent work restrictions preventing him from working in the inspection lanes of the Division of Motor Vehicles, Kendall Raye Rogers will remain in the Driver's License section and will not be assigned to the Inspection Lanes.

Kendall Raye Rogers further states that he is over 18 years of age, that he has carefully read this Release and Settlement Agreement, that he knows and understands the contents of this Release and Settlement Agreement, that he signs it voluntarily as his own free action, and that he expressly agrees to the Terms of this Release and Settlement Agreement.

Dated: 6/4/04

  
Kendall Raye Rogers

Dated: 6/4/04

  
James J. Hanley (D. No. 1020)  
Deputy Attorney General  
State of Delaware  
Department of Justice  
820 North French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801  
Attorney for Defendants  
State of Delaware, Department of Public Safety  
Division of Motor Vehicles  
(302) 577-8400

## State of Delaware Merit Rules

**1.4** The State has the exclusive right to manage its operations and direct employees except as specifically modified by these Rules.<sup>1</sup>

**10.6** Transfer. To promote the efficiency of the service, unrelated to employee performance, employees may be transferred to another position for which they meet minimum qualifications in the same paygrade within the same agency with or without competition.<sup>1</sup>

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<sup>1</sup> [http://delawarepersonnel.com/mrules/documents/Merit\\_rules\\_091406.pdf](http://delawarepersonnel.com/mrules/documents/Merit_rules_091406.pdf), as appeared on September 27, 2006.

**Miller Donna (DeIDOT)**

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**From:** Seibel Rick (DeIDOT)  
**Sent:** Wednesday, February 22, 2006 3:35 PM  
**To:** Miller Donna (DeIDOT)  
**Subject:** FW: Hiring Freezes

-----Original Message-----

**From:** Beyer Doug (DeIDOT)  
**Sent:** Wednesday, February 22, 2006 3:30 PM  
**To:** Seibel Rick (DeIDOT)  
**Subject:** Hiring Freezes

Rick, two hiring freezes. Mar 19, 2002 - July 1, 2002  
Sept 18, 2002 - Dec 16, 2003

Doug

EXHIBIT 3



**McCann Michael (MTRV)**

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**From:** Eanes Jack (MTRV)  
**Sent:** Wednesday, January 29, 2003 6:50 PM  
**To:** McCann Michael (MTRV)  
**Subject:** RE: Rogers

The main argument I would make is New Castle has one full time vacancy another full time employee at Wilmington due to a disability and another full time employee out indefinitely for a major operation. In addition, they also have a part time position in drivers license vacant. They currently have nine full time employees and that includes Babe Conway who is out indefinitely. Dover has eight full time employees assigned counting Kendall. Workload per employee for October and November 2002.

New Castle-October-5814 D/L Transactions-646 per employee, 242 Class D Road test-27 per employee, 38 CDL Road Tests-4.2 per employee.  
Dover- -October-3279 D/L Transactions-364 per employee; 94 Class D Road Tests-11.75 per employee, 31 CDL Road Tests-3.9 per employee.

New Castle-November-4762 D/L Transactions-529 per employee; 244 Class D Road Tests-27 per employee; 40 CDL Road Tests-4.4 per employee.  
Dover- November-2667 D/L Transactions-364 per employee; 77 Class D Road Tests-9.6 per employee; 21 CDL Road Tests-2.6 per employee.

I can get you some more data if you need it but I believe that should be sufficient.

Jack E. Eanes  
Chief of Operations  
Delaware Division of Motor Vehicles  
302.744.2515 / 302.739-2042 (fax)  
jack.eanes@state.de.us

-----Original Message-----

**From:** McCann Michael (MTRV)  
**Sent:** Wednesday, January 29, 2003 3:54 PM  
**To:** Eanes Jack (MTRV)  
**Subject:** Rogers

Jack,

Michelle says that when we tell Kendall to go to New Castle we have to give him a letter stating that he is going and why. Mike S. has suggested that the letter contain operational justification, i.e. actual numbers, for sending him north. Mike suggested that we could look at the transactions per employee at Dover versus New Castle and maybe the driving test backlog. What I need from you is some hard evidence to put in this letter.

Anything you can think of would be appreciated. If you can get me the numbers, I'll try to put the verbiage together. When this is ready, we can talk to Kendall. Thanks for your help.

Michael O. McCann  
Chief of Administration  
Division of Motor Vehicles  
(302) 744-2546 (wk) / (302) 739-3152 (fax)  
E-Mail: Michael.McCann@state.de.us

## McCann Michael (MTRV)

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From: Eanes Jack (MTRV)  
Sent: Thursday, January 30, 2003 9:24 AM  
To: McCann Michael (MTRV)  
Subject: RE: Rogers

One other thing. New Castle has dropped their appointment schedule for Class D road tests, so customers are now served on a walk in basis. Customers are turned away daily due to no appointments being available. The CDL backlog is 14 days for New Castle and 8 days for Dover.

Jack E. Eanes  
Chief of Operations  
Delaware Division of Motor Vehicles  
302.744.2515 / 302.739-2042 (fax)  
jack.eanes@state.de.us

-----Original Message-----

From: McCann Michael (MTRV)  
Sent: Wednesday, January 29, 2003 3:54 PM  
To: Eanes Jack (MTRV)  
Subject: Rogers

Jack,

Michelle says that when we tell Kendall to go to New Castle we have to give him a letter stating that he is going and why. Mike S. has suggested that the letter contain operational justification, i.e. actual numbers, for sending him north. Mike suggested that we could look at the transactions per employee at Dover versus New Castle and maybe the driving test backlog. What I need from you is some hard evidence to put in this letter.

Anything you can think of would be appreciated. If you can get me the numbers, I'll try to put the verbiage together. When this is ready, we can talk to Kendall. Thanks for your help.

Michael O. McCann  
Chief of Administration  
Division of Motor Vehicles  
(302) 744-2546 (wk) / (302) 739-3152 (fax)  
E-Mail: Michael.McCann@state.de.us



**McCann Michael (MTRV)**

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**From:** Stapleton Bucky (MTRV)  
**Sent:** Thursday, February 27, 2003 1:36 PM  
**To:** Ericson Art (MTRV); McCann Michael (MTRV)  
**Subject:** RE: K. Rogers

Yes this communication was verbal

-----Original Message-----

**From:** Ericson Art (MTRV)  
**Sent:** Thursday, February 27, 2003 1:26 PM  
**To:** McCann Michael (MTRV)  
**Cc:** Stapleton Bucky (MTRV)  
**Subject:** RE: K. Rogers

To my knowledge, everything was verbal. Bucky, please confirm this.

-----Original Message-----

**From:** McCann Michael (MTRV)  
**Sent:** Thursday, February 27, 2003 11:57 AM  
**To:** Ericson Art (MTRV)  
**Subject:** K. Rogers

Hey Art-----Regarding the solicitation of volunteers to work in New Castle-----Michelle Flanders asked if we did that in writing or have anything about it at all in writing. Please let me know. Thanks.

Michael O. McCann  
Chief of Administration  
Division of Motor Vehicles  
(302)744-2546(wk) / (302)739-3152(fax)  
E-Mail: Michael.McCann@state.de.us

**McCann Michael (MTRV)**

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**From:** Stapleton Bucky (MTRV)

**Sent:** Wednesday, March 19, 2003 4:35 PM

**To:** McCann Michael (MTRV)

Mike on or about January 23<sup>rd</sup> 2003; I was asked by Art Ericson to see if I had any Motor Vehicle Techs that would volunteer to go to New Castle to help with the back log of road tests that New Castle was experiencing. Upon Art's request I verbally asked the following Techs if they would volunteer. 1. David Vanarsdall 2. Cesar Franceschi 3. Roy Fair 4. Linda Doughten 5. Kendall Rogers. None of these Techs volunteered my request. I then informed Art Ericson.

3/20/2003

EXHIBIT 7